

ESTTA Tracking number: **ESTTA198467**

Filing date: **03/14/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Traditional Medicinals, Inc.		
Entity	Corporation	Citizenship	California
Address	4515 Ross Road Sebastopol, CA 95472 UNITED STATES		

Attorney information	Jay H. Geller 2425 Olympic Bl., Suite 4000W Santa Monica, CA 90404 UNITED STATES jhgeller@aol.com Phone:3104491399
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Applicant Information

Application No	77004667	Publication date	03/11/2008
Opposition Filing Date	03/14/2008	Opposition Period Ends	04/10/2008
International Registration No.	NONE	International Registration Date	NONE
Applicant	K.U.M. Hair Care Products, Inc. Unit 7 85 Royal Crest Court Markham, L3R9X5 CANADA		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Hair care products, namely, (Based on 1(b) and 44(e)) shampoo, conditioner, (Based on 1(b) only) hair spray, hair gel, hair styling cream, hair wax, hair mousse, peroxide compositions, hair bleach, hair colour, hair treatment compositions, hair loss treatment compositions

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1258223	Application Date	08/12/1982
Registration Date	11/22/1983	Foreign Priority Date	NONE
Word Mark	SMOOTH MOVE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1974/10/00 First Use In Commerce: 1976/01/05 Herbal Teas for Use as a Laxative

U.S. Registration No.	2520275	Application Date	10/18/2000
Registration Date	12/18/2001	Foreign Priority Date	NONE
Word Mark	SMOOTH MOVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1974/10/00 First Use In Commerce: 1976/01/05 medicinal herb teas Class 030. First use: First Use: 1974/10/00 First Use In Commerce: 1976/01/05 herb tea for food purposes		

U.S. Registration No.	3344362	Application Date	02/07/2006
Registration Date	11/27/2007	Foreign Priority Date	NONE
Word Mark	SMOOTH MOVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1976/01/00 First Use In Commerce: 1976/01/00 (Based on Use in Commerce) Dietary supplements; (Based on Use in Commerce) Herbal supplements; Nutritional supplements		

Attachments	78978772#TMSN.jpeg (1 page)(bytes) SmoothOpp.pdf (2 pages)(385441 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jhgeller/
Name	Jay H. Geller
Date	03/14/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Traditional Medicinals, Inc.)	
)	<u>NOTICE OF OPPOSITION</u>
Opposer,)	
)	
v.)	
Novartis, AG)	
)	
Applicant.)	
.....		

To The Commissioner of Patents and Trademarks:

Traditional Medicinals, Inc. hereby opposes registration of Applicant's trademark, SENNA SMOOTH, published in the Official Gazette of February 6, 2007. The following allegations are submitted in support of this Notice of Opposition:

1. Opposer is a California corporation, with its principal place of business in Sebastopol, CA.

2. Applicant, upon information and belief, is a corporation under the laws of Switzerland with its principal place of business in Basel, Switzerland.

3. Applicant has applied for serial number 78974410 for the trademark SENNA SMOOTH claiming a bona fide intent to use. The application was filed on September 14, 2006.

4. Opposer has at least since 1974, long prior date of filing of the subject application, used the SMOOTH MOVE in interstate commerce in the United States respect to goods in International Class 5, particularly herbal for use as a laxative and medicinal herb teas. Opposer owner of United States registration 1258223 for herb teas as a laxative (which registration has become incontestable valid and subsisting) and 2520275 for medicinal herb tea for

a Section 15 declaration has been filed and is awaiting acknowledgement.

5. Applicant's mark wholly incorporates that part of Opposer's trademark that consists of the word SMOOTH, and that portion of applicant's mark is identical in sound, spelling and appearance to Opposer's trademark.

6. The goods upon which applicant intends to use its mark SENNA SMOOTH are identical to those goods upon which Opposer uses its mark SMOOTH MOVE.

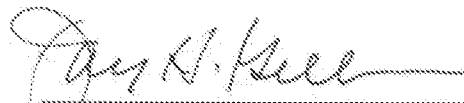
7. The likelihood of confusion in the marketplace exists between Opposer's trademark when applied to the goods of the respective parties, and applicant's trademark.

8. Registration of applicant's trademark will dilute registrant's famous mark SMOOTH MOVE.

9. Registration of applicant's trademark will result in damage to Opposer's trademark and Opposer's business.

Wherefore, Opposer requests that this Opposition be sustained and that the registration to the Applicant be refused.

Dated: February 16, 2007



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